

**BOARD OF APPEALS CASE NO. 5309**

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**BEFORE THE**

**APPLICANT: Vernon & June Parsons,  
Roy Gullion**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit an existing  
garage located within the recorded easement;  
143 Redbud Road, Edgewood**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 11/20/02 & 11/27/02**

**HEARING DATE: January 6, 2003**

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**Record: 11/22/02 & 11/29/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, June Parsons, Vernon Parsons, Jr., and Roy Gullion, are requesting a variance, pursuant to Section 267-26C(6), of the Harford County Code, to allow an existing garage within a recorded easement in an R3/Urban Residential District.

The subject parcel is located at 143 Willoughby Beach Road, Edgewood, MD 21040 and is more particularly identified on Tax Map 66, Grid 2C, Parcel 0507, Lot 152. The parcel consist of 5000 square feet, is entirely within the First Election District and is zoned R3/Urban Residential.

Mr. Vernon Parsons appeared and testified that he owns the subject parcel and that he currently has a contract of sale. It was during the title process associated with the sale that he discovered that the existing garage is located within an easement. The garage was built approximately 11 years ago and there is no existing permit for its construction. There are similar structures on other properties that are also within the easement. There are trees planted along the rear property line and, according to the witness, if the variance is denied, the garage would require demolition and there is no other practical location for the structure.

Mr. Samuel Freeman appeared as an expert real estate agent. The witness indicated that the property looks "great" with the garage. Nearly every other property in the immediate area has some structure in this easement ranging from fences to sheds and garages. In the opinion of the witness, the garage is not presenting any adverse or safety impact. Additionally it would be a hardship if the Applicant were required to tear down the garage. The witness reiterated the testimony of the Applicant that there is no other practical location for the garage.

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Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. The Department, in recommending approval of the subject request, found the parcel to have topographic features that are unique and that justify the grant of the variance. The houses in this development, including the Applicant's, were built to minimum setback distances. The adjoining property sits back further than the Applicant's and if the garage were moved out of its present location a greater impact to the adjacent property would result, thus defeating the purpose of the Code. Mr. McClune pointed out that in 1992 the Department of Public Works inspected the property and determined that the garage could remain within the easement unless the garage was found, in the future, to create drainage problems within the easement or, if the Department ever needed the garage to be removed due to work requirements within the easement.

There were no persons that appeared in opposition to this request.

### **CONCLUSION:**

The Applicants, June Parsons, Vernon Parsons, Jr., and Roy Gullion, are requesting a variance, pursuant to Section 267-26C(6), of the Harford County Code, to allow an existing garage within a recorded easement in an R3/Urban Residential District.

Harford County Code Section 267-26C(6) provides:

"Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (6) No accessory use or structure, except fences, shall be located within any recorded easement area."

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

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The subject parcel is, in the opinion of the Hearing Examiner, not unique. The parcel is similar in shape to other parcels located in the immediate area. Attachment 5 to the staff report is an aerial photographic view of the subject parcel and surrounding area. The subject parcel is a rectangular shaped lot similar in size and slope to adjacent and surrounding properties. The Applicant and his real estate expert both testified that similar structures are found in this neighborhood and within the easement but the aerial photographic contradicts that testimony. Based on that photographic evidence of Attachment 5, it appears to the Hearing Examiner that there are no structures similar in size to the subject garage in the immediate area of the Applicant's parcel. It is true that the adjacent property owner to one side has a house which is set back slightly further than the Applicant's, that difference is not significant. More importantly, the house to the other side of Applicant's house appears to be setback about the same distance as Applicant's.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

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The Hearing Examiner finds that the parcel is not unique in the sense required by the Code or the courts. There is nothing on the property that requires the placement of the garage at the present location. Based on photographic evidence produced with the file it does not appear that similar sized garages or other structures are commonly found in this community. Certainly, there is nothing similar to this garage on properties adjacent to the subject parcel. The Hearing Examiner recognizes that the Applicant could experience a hardship relative to removal of the garage from its present location. However, based on the two step process required by Harford County Code Section 267-11 and the test set forth by the Maryland Court of Special Appeals in Cromwell, supra., the issue of hardship does not become relevant to a zoning case unless there is first a finding of uniqueness. Additionally, if the hardship is not a result of the disproportionate impact of the zoning ordinance it is equally irrelevant. Lastly, any hardship that exists results not from the impact of the ordinance, but rather as a result of the failure to obtain a permit for construction of the garage 11 years ago. Had that occurred, the garage could have been placed elsewhere on the property without violation of the Harford County Zoning Code. Lastly, approval of this request would be tantamount to a blanket variance approval of the entire neighborhood, allowing each of the other similarly situated parcels to construct garages and other structures in the easement. The Hearing Examiner finds such a blanket approval inconsistent with the purposes of the Harford County Zoning Code.

Based upon the foregoing, the Hearing Examiner recommends denial of the subject request.

Date     FEBRUARY 6, 2003

William F. Casey  
Zoning Hearing Examiner